our judgment, the tactics now being employed again show that Miguel Estrada is receiving differential treatment.

Now Judge Gonzales Concludes this way, addressing himself to Senator Schumer:

As I have said before, I appreciate and respect the Senate's constitutional role in the confirmation process. You have expressed concern that you do not know enough about Mr. Estrada's views, but you have not submitted any follow-up questions to him. We respectfully submit that the Senate has ample information and has had more than enough time to consider questions about the qualifications and suitability of a nominee submitted more than 21 months ago. Most important, we believe that a majority of Senators have now concluded that they possess sufficient information on Mr. Estrada and would vote to confirm him. We believe it is past time for the Senate to vote on this nominee, and we urge your support.

Sincerely,

ALBERTO R. GONZALES
Counsel to the President

Now as we heard earlier an enormous number of editorials, over 60 editorials all over the country have opposed the Democrat filibuster and support Miguel Estrada. Only eight have taken the Democrat view of things—only eight.

It is clear to anyone that what the minority is doing in filibustering Miguel Estrada's nomination is far from the mainstream of what thoughtful people are thinking across this country.

Mr. President, I will read from just a few of these:

First, on the question of the Solicitor General memos:

Boston Herald, 2/14/03:

The latest [bad argument] has to do with the White House's refusal to release memos and documents written by Estrada during his tenure in the solicitor general's office. Now all of the living former solicitors general—four Democrats and three Republicans—happen to agree with the White House position. There is such a thing as attorney-client privilege, even for the solicitor general.

South Carolina's Spartenburg Herald Journal, 2/14/03:

The administration refused to turn over his Justice Department memos—though no reasonable Congress ought to be seeking such material, as a letter from all living former solicitors general attests. They have asked the White House to release internal legal memos he wrote while working for the Solicitor General's Office. These are documents that are usually kept within the White House. In fact, every living former solicitor general, four Democrats and three Republicans, are against releasing the memos. Presidents rely on the Solicitor General's Office to give them legal advice. They don't want those lawyers to be worrying about how their memos will impact future attempts to win judicial seats. The White House has refused to release the documents.

California's Redding Record Searchlight, 2/15/03:

Well, but the administration won't hand over memos he wrote when he was in the solicitor general's office, say the Senate Democrats. It apparently does not matter to them that publicizing them could rob future memos of their candor and that every former solicitor general of either party has said the Democrats seek too much.

Rhode Island's Providence Journal-Bulletin, 2/14/03:

[Democrats] have demanded not only supplementary detailed responses to political inquiries, but also Mr. Estrada's confidential memoranda written while he was an assistant solicitor general. Every living solicitor general, Democratic and Republican, has gone on record to oppose this unwarranted intrusion into the deliberative process in the Justice Department. And the Bush administration has been correct to resist Democratic demands.

Chicago Tribune, 2/10/03:

The Justice Department has refused to release Estrada's memos, noting that such documents have always been regarded as confidential. Every living former solicitor general, Democratic and Republican, has publicly endorsed that position. They say making the documents public would discourage government lawyers from offering candid advice. Anyone who wants a glimpse into Estrada's thinking can scrutinize the briefs he wrote and oral arguments he made.

Detroit News, 2/11/03:

Democrats also demanded that he produce his memos and recommendations while he was in the solicitor general's office—which had never been done for any other candidate who had been an assistant in that office. The demand was rejected not only by Estrada, but by every former solicitor general still living, including those who served Democratic presidents.

Tampa Tribune, 2/10/03:

Yet the Democrats claim they don't know enough about Estrada. They have demanded to see copies of his work in the Justice Department, intentionally seeking papers they knew to be confidential. Because Estrada did not turn them over, they have attempted to crucify him, this despite letters from former solicitors general complaining that their demand amounted to legislative overreach and that acceding to it would set a dangerous precedent.

St. Louis Post-Dispatch, 2/7/03:

Mr. Estrada is an immigrant from Honduras who went to Harvard Law School, clerked on the Supreme Court and worked in the Solicitor General's office. Democrats, frustrated by the absence of a paper trail, and Mr. Estrada's sometimes-evasive answers on issues such as abortion, tried to get legal memos that Mr. Estrada wrote while in the Solicitor General's office. But both Democratic and Republican solicitors general have urged that the memos be kept private so that future solicitors general receive candid views from their staff. In short, the Democratic position doesn't justify a filibuster.

Washington Post, 2/5/03:

Mr. Estrada's nomination in no way justifies a filibuster. The case against him is that he is a conservative who was publicly criticized by a former supervisor in the Office of the Solicitor General, where he once worked. He was not forthcoming with the committee in its efforts to discern his personal views on controversial issues—as many nominees are not—and the administration has (rightly) declined to provide copies of his confidential memos from his service in government.

Also from the Washington Post, September 29 of last year:

Democrats are still pushing to see confidential memos Mr. Estrada wrote in the solicitor general's office and trumpeting criticism of him by a single supervisor in that office—criticism that has been discredited by that same colleague's written evaluations. Seeking Mr. Estrada's work product as a government lawyer is beyond any reasonable inquiry into what sort of judge he would be. Nor is it fair to reject someone as a judge because that person's decision to practice law, rather than write articles or engage in politics, makes his views more opaque. And it is terribly wrong to demand that Mr. Estrada answer charges to which nobody is willing to attach his or her name.

The Press-Enterprise, Riverside, CA, entitled ''Advice and Filibuster,'' 2/18/03:

Democratic senators are frustrated by the White House's refusal to release to them memoranda he wrote as solicitor general. But in the best of times, such a request would be out of line, and these are closer to the worst than to the best for the nomination process. If the memoranda were to be used as an honest beginning to a discussion of Mr. Estrada's legal views, there might be some justification for releasing the documents that would normally be considered privileged. One suspects that's not the role the Democrats have in mind for the memoranda. They probably hope to expose Mr. Estrada's conservative views, which no one doubts he holds, in hopes of defeating the nomination or at least scoring some political points.

Winston-Salem Journal, 2/20/03:

[Democrats] have demanded that [Mr. Estrada] turn over confidential papers from his years as solicitor general. Congress should not be asking for such material, as all living solicitors general have said in a letter.

Mr. President, as I said, over 60 editorials share this view. Only 8 have expressed an opposite view.

Mr. President, the hour is late, or early, depending on how you see it. I hope that my friends on the other side of the aisle will see differently tomorrow in the light of day.

LEGISLATIVE SESSION

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate return to Legislative Session and proceed to a period of morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

RACE-SENSITIVE ADMISSIONS: BACK TO BASICS

Mr. FRIST. Mr. President, I ask unanimous consent that the following paper, ''Race-sensitive Admissions: Back to Basics,'' by William G. Bowen, president emeritus of Princeton University, and Neil L. Rudenstine, president emeritus of Harvard University, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

The controversy (and confusion) surrounding the White House's recent statements on the use of race in college and university admissions indicate the need for careful examination of the underlying issues. The Justice Department has filed a brief with the U.S. Supreme Court urging it to declare two race-sensitive policies at the University of Michigan unconstitutional; however, the brief does not rule out ever taking

race into account, but argues that institutions should first exhaust all ''race-neutral'' alternatives. Secretary of State Colin Powell has publicly said that he supports not just affirmative action, but also the Michigan policies. National Security Adviser Condoleezza Rice says she opposes the specific methods used by Michigan, but recognizes the need to take race into account in admissions.

As the Supreme Court prepares to hear oral arguments in a case that will shape college admissions processes in the coming decades, those of us who believe that such processes should be permitted to include a nuanced consideration of race must speak out clearly as well as forcefully. Too often, we fear, the key issues have been oversimplified or overlooked. Having been personally involved with this highly contentious subject for more than 30 years, we would like to try to frame the discussion by offering a set of nine connected propositions about race and admissions that derive from core human values and substantial empirical research.

1. The twin goals served by race-sensitive admissions remain critically important.

The debate over race-sensitive admissions has relevance only at public and private institutions of higher education that have to choose among considerably more qualified candidates than they can admit. Essentially all of these ''academically selective'' colleges and universities have elected to take race into account in making admissions decisions, a fact that, in itself, has considerable import. Race-sensitive admissions programs are intended to serve two important purposes:

To enrich the learning environment by giving all students the opportunity to share perspective and exchange points of view with classmates from varied backgrounds. The recognition of the educational power of diversity led many colleges and universities—well before the mid-1960s, when the term affirmative action began to be used—to craft incoming classes that included students representing a wide variety of interests, talents, backgrounds, and perspectives. The Shape of the River, written by William Bowen and Derek Bok, provides abundant evidence that graduates of these institutions value educational diversity and, in general, are strong supporters of race-sensitive admissions. Survey responses from more than 90,000 alumni of selective colleges and universities show that nearly 80 percent of those who enrolled in 1976 and 1989 felt that their alma mater placed the right amount of emphasis—or not enough—on diversity in the admissions process. That same survey also found that there is much more interaction across racial lines than many people suppose. In the 1989 entering cohort, 56 percent of white matriculants and 88 percent of black matriculants indicated that they ''knew well'' two or more classmates of the other race.

To serve the needs of the professions, of business, of government, and of society more generally by educating large numbers of well-prepared minority students who can assume positions of leadership—thereby reducing somewhat the continuing disparity in access to power and responsibility that is related to race in America. Since colonial days, colleges and universities have accepted an obligation to educate individuals who will play leadership roles in society. Today, that requires taking account of the clearly articulated needs of business and the professions for a healthier mix of well-educated leaders and practitioners from varied racial and ethnic backgrounds. Professional groups like the America Bar Association and the American Medical Association, and businesses like General Motors, Microsoft, and American Airlines (among many others), have explicitly endorsed affirmative-action policies in higher education. Leading law firms, hospitals, and businesses depend heavily on their ability to recruit broadly trained individuals from many racial backgrounds who are able to perform at the highest level in settings that are themselves increasingly diverse. A prohibition on the consideration of race in admissions would drastically reduce minority participation in the most selective professional programs. Does it make any sense to resegregate, de facto, many of the country's most respected professional schools and to slow the progress that has been made in achieving diversity within the professions? We don't think so.

2. Private colleges and universities are as likely as their public counterparts to be affected by the outcome of this debate.

The fact that litigation over affirmative action has, thus far, centered on public universities should not lead that private institutions will be unaffected. The 1996 federal-court ruling in Hopwood v. Texas, banning race-sensitive admission policies in Texas, Louisiana, and Mississippi, has been understood to cover Rice University as well as public universities such as the University of Texas. Title VI of the Civil Rights Act of 1964 subjects all institutions that receive federal funds to any court determinations as to what constitutes ''discrimination.'' Because many private colleges and universities have invested substantial resources in creating diverse entering classes, they might well be more dramatically affected by any limitation on their freedom to consider race than would most public institutions. That is especially true because they are, in general, smaller and more selective in admissions than their public counterparts.

It matters that minority applicants have access to the most selective programs, at both undergraduate and graduate levels, in both private and public institutions. The argument that they will surely be able to ''get in somewhere'' rings hollow to many people. As one black woman quoted in The Shape of the River observed wryly to a white parent: ''Are you telling me that all those white folks fighting so hard to get their kids into Duke and Stanford are just ignorant? Or are we supposed to believe that attending a top-ranked school is important for their children but not for mine?'' That interchange was not just about perceptions. Various studies show that the short-term and long-term gains associated with attending the most selective institutions are, if anything, greater for minority students than for white students, and that academic and other resources are concentrated increasingly in the top-tier colleges and universities.

3. Race-sensitive admissions policies involve much ''picking and choosing'' among individual applicants; they need not be mechanical, are not quota systems, and involve making bets about likely student contributions to campus life and, subsequently, to the larger society.

Contrary to what some people believe, admissions decisions at academically selective public and private colleges and universities are much more than a ''numbers game.'' They involve considerations that extend far beyond test scores and GPAs. Analysis of new data from leading private research universities for the undergraduate class entering in 1999 (reported in the forthcoming Reclaiming the Game, by William G. Bowen and Sarah A. Levin) indicates that a very considerable number of high-scoring minority students were turned down. For instance, among male minority applicants with combined SAT scores in the 1200–1299 range (which put them well within the top 10 percent of minority test-takers and the top 20 percent of all test-takers, regardless of race), the odds of admission were about 35 percent: that is, roughly two out of three of these minority applicants were denied admission. At the very top of the SAT distribution (in the 1400-plus range), nearly two out of five were not admitted. Public universities are larger and somewhat less selective, but they also turn down very high-scoring minority candidates. At two public universities for which detailed data are available, one out of four minority candidates in the 1200 to 1399 SAT range was rejected.

In short, admissions officers at both private and public universities have been doing exactly what Justice Powell, in the landmark 1978 decision, Regents of the University of California v. Bakke, said that they should be allowed to do: pursuing ''race-sensitive'' admission policies that entail considering race among other factors. They have been weighing considerations that are both objective (advanced-placement courses taken in high school, for example) and subjective (indications of drive, intellectual curiosity, leadership ability, and so on). And they have been selecting very well. According to all the available evidence, minority students admitted to academically selective colleges and universities as long ago as the mid-1970s have been shown to be successful in completing rigorous graduate programs, doing well in the marketplace, and, most notably, contributing in the civic arena out of all proportion to their numbers.

Minority candidates are, of course, by no means the only group of applicants to receive special consideration. Colleges and universities have long paid special attention to children of alumni, to ''development cases,'' to applicants who come from poor families or who have otherwise overcome special obstacles, to applicants who will add to the geographic (including international) diversity of the student body, to students with special talents in fields such as music, and, especially in recent years, to athletes. Some readers may be surprised to learn from Reclaiming the Game that recruited athletes at many selective colleges are far more advantaged in the admission process (that is, are much more likely to be admitted at a given SAT level) than are minority candidates.

A related topic deserves some emphasis, and that is the issue of ''quotas.'' There is not space here to discuss the subject in detail, but one point is important to clarify. The fact that the percentage of minority students in many colleges and universities does not fluctuate substantially from year to year is in no sense prima facie evidence that quotas are being used. Anyone familiar with admissions processes—and with their basic statistics—knows that percentages for virtually all subgroups of any reasonable size are remarkably consistent from year to year. That is because the size of the college-going population does not change significantly on an annual basis, nor do the numbers and quality of secondary schools from which institutions draw applications, nor does the number of qualified candidates. All of these numbers are very stable, and it is therefore not at all surprising that incoming college classes should change very little in their composition from year to year. (For example, we suspect that the fraction of an entering class wearing eyeglasses is remarkable consistent from year to year, but that would hardly persuade us that an eyeglass quota is being imposed.)

4. Selectivity and ''merit'' involve predictions about on-campus learning environments and future contributions to society.

One of the most common misconceptions is that candidates who have scored above some level or earned a certain grade-point average ''deserve'' a place in an academically selective institution. That ''entitlement'' notion

is squarely at odds with the fundamental principle that, in choosing among a large number of well-qualified applicants, all of whom are over a high threshold, colleges and universities are making bets on the future, not giving rewards for prior accomplishments. Institutions are meant to take well-considered risks. That can involve turning down candidate ''A'' (who is entirely admissible but does not stand out in any particular way) in favor of candidate ''B'' (who is expected to contribute more to the educational milieu of the institution and appears to have better long-term prospects of making a major contribution to society). All applicants, of course, deserve to be evaluated fairly, which means treating them the same way as other similarly situated candidates; but, in the words of Lee Bollinger, president of Columbia University and former president of the University of Michigan, ''there is no right to be admitted to a university without regard to how the overall makeup of the student body will affect the educational process or without regard to the needs of the society . . . ''Merit'' is not a simple concept. It has certainly never meant admitting all the valedictorians who apply, or choosing students strictly on the basis of test scores and GPAs.

An elaborate admissions process, which focuses on the particular characteristics of individuals within many subgroups—and on those of the entire pool of applicants—is designed to craft a class that will, in its diversity, be a potent source of educational vitality. Colleges use a variety of procedures to take account of race, and it is essential that differences of opinion concerning the wisdom (or even the legality) of any single approach not lead to an outcome that precludes other approaches.

5. Paying special attention to any group in making admissions decisions entails costs; but the costs of race-sensitive admissions have been modest and well-justified by the benefits.

The ''opportunity cost'' of admitting any particular student is that another applicant will not be chosen. But such choices are rarely ''head-to-head'' decisions. For example, there is no reason to believe—as reverse-discrimination lawsuits generally assume—that if a particular minority student had not been accepted, his or her place would have been given to a complainant with comparable or better test scores or grades. The choice might, instead, have been an even higher-scoring minority student who had not been admitted, a student from a foreign country, or a lower-scoring white student from one of several subgroups that are given extra consideration in the admissions process. Making hard choices on the margin is never easy and always—fortunately—involves human judgments made by experienced admissions officers. It is, in any case, wrong to assume that race-sensitive admissions policies have significantly reduced the changes of well-qualified white students to gain admission to the most selective colleges. Findings reported in The Shape of the River, based on data for a subset of selective colleges and universities, demonstrate that elimination of race-sensitive policies would have increased the admission rate for white students by less than two percentage points: from roughly 25 percent of 26.5 percent.

It should be emphasized that taking race into account in making admissions decisions does not appear to have two kinds of costs often mentioned by critics of these policies.

First, there is no systemic evidence that race-sensitive admissions policies tend to ''harm the beneficiaries'' by putting them in settings in which they are overmatched intellectually or ''stigmatized'' to the point that they would have been better off attending a less selective institution. On the contrary, extensive analysis of data reported in The Shape of the River shows that minority students at selective schools have, overall, performed well. The more selective the school that they attended, the more likely they were to graduate and earn advanced degrees, the happier they were with their college experience, and the more successful they were in later life.

Second, the available evidence disposes of the argument that the substitution of ''race-sensitive'' for ''race-neutral'' admissions policies has led to admission of many minority students who are not well-suited to take advantage of the educational opportunities they are being offered. Examination of the later accomplishments of those students who would have been ''retrospectively rejected'' under race-neutral policies shows that they did just as well as a hypothetical reference group that might have been admitted if GPAs and test scores had been the primary criteria (which is, itself, a questionable assumption). There are no significant differences in graduation rates, advanced-degree attainment, earnings, civic contributions, or satisfactions with college. In short, the abandonment of race-sensitive admissions would not have removed from campuses a marginal group of mediocre students. Rather, it would have deprived campuses of much of their diversity and diminished the capacity of the academically selective institutions to benefit larger numbers of talented minority students.

6. Progress has been made in narrowing test-score gaps between minority students and other students, but gaps remain.

A frequently asked question is: Are we getting anywhere? Data on average test scores in Reclaiming the Game are encouraging. At a group of liberal-arts colleges and universities examined in 1976 and 1995, average combined SAT test scores for minority students rose roughly 130 points at the liberal-arts colleges and roughly 150 points at the research universities. Test scores for other students rose, too, but by much smaller amounts (roughly 30 points at the liberal-arts colleges and roughly 70 points at the research universities). Test-score gaps narrowed over this period, and the average rank-in-class of minority students on college graduation improved even more than one would have predicted on the basis of test scores alone. As anyone who has studied campus life can attest, there are also many impressionistic signs of progress. Minority students are more involved in a wide range of activities, and increasing numbers of children of minority students of an earlier day are now reaching the age where they are beginning to enroll as ''second generation'' college students. Graduates are also increasingly making their presence known in the professions and business world.

Still, test-score gaps remain (of roughly 100 to 140 points in the private colleges and universities for which we have data), and so there is still more progress to be made. That is hardly surprising, given the deep-seated nature of the factors that impede academic opportunity and achievement among minority groups—including the fact that a very large proportion of such students continue to attend primary and secondary schools that are underfinanced, insufficiently challenging, and often segregated. It would be naive to expect that a problem as long in the making as the racial divide in educational preparation could be eradicated in a generation or two.

7. There are alternative ways of pursuing diversity, but all substitutes for race-sensitive admissions have serious limitations.

Many of us have a strong appetite for apparently painless alternatives, and it is natural to look for ways to achieve ''diversity'' without directly confronting the emotion-laden issue of race. Several alternatives to race-sensitive admissions have been suggested. For example, colleges and universities have been urged to:

Focus on the economically disadvantaged. The argument is that, since racial minorities are especially likely to be poor, racial diversity could be promoted in this way (an approach sometimes referred to as ''class-based affirmative action''). The results, however, would not be what some people might expect. Several studies have shown that there are simply very few minority candidates for admission to academically selective institutions who are both poor and academically qualified.

Adopt a ''percentage plan'' whereby all high-school students in a state who graduate in the top X percent of their classes are automatically guaranteed a place in one of the state's universities. In states like Texas, where the secondary-school system is highly segregated, that approach can yield a significant number of minority admissions at the undergraduate level (although the actual effects, even at the undergraduate level, have been shown by the social scientists Marta Tienda and John F. Kain to be more limited than many have suggested). Moreover, the process is highly mechanical. Students in the top X percent are not simply awarded ''points,'' as the undergraduate program at the University of Michigan does. Rather, they are given automatic admission without any prior scrutiny, and without any consideration of the fact that some high schools are much stronger academically than others.

Even if one considered the top-X-percent plan to be viable at state institutions, it could not work at all at private institutions, which admit from national and international pools of applicants and are so selective that they must turn down the vast majority who apply—including very large numbers of students who graduate at or near the top of their secondary-school classes. Private institutions could not conceivably adopt a policy that would automatically give admission to students in the top X percent of their class at the hundreds and hundreds of schools—worldwide—from which they attract applicants.

The top-X-percent plan is also entirely ineffective at the professional and graduate-school level, because (like selective undergraduate colleges) these schools have national and international applicant pools, with no conceivable ''reference group'' of colleges to which they could possibly give such an admission guarantee. Even if there were a set of undergraduate colleges whose top graduates would be guaranteed admission to certain professional schools, the result would not represent any marked degree of racial diversity. For example, if the top 10 percent of students in the academically selective colleges and universities studied in Reclaiming the Game were offered admission to a professional school (an unrealistically high percentage given the intensely competitive nature of the admission process), only 3 percent of the students included in that group would be underrepresented minorities—and, of course, only some modest fraction of those students would be interested even in applying to such programs. If we are examining a top-5-percent plan, the minority component of the pool would be about one-half of 1 percent. Without some explicit consideration of race, professional schools that ordinarily admit a significant number of their students from selective colleges would simply not be able to enroll a diverse student body.

Other troubling questions include: Do we really want to endorse an admissions approach that depends on de facto segregation

at the secondary-school level? Do we want to impose an arbitrary and mechanical admissions standard—based on fixed rank-in-class—on a process that should involve careful consideration of all of an applicant's qualifications as well as thoughtful attention to the overall characteristics of the applicant pool?

Place heavy weight on ''geographic distribution'' and so-called ''experiential'' factors, such as a student's ability to overcome obstacles and handicaps of various kinds, or the experience of living in a home where a language other than English is spoken. The argument here is that, if special attention were given to these and analogous criteria, then a sizable pool of qualified minority students would automatically be created.

But, as we have mentioned, colleges have been using precisely such criteria for many decades, and they have discovered—not surprisingly—that there are large numbers of very competitive ''majority'' candidates in all of the suggested categories. For example, if a student's home language is Russian, Polish, Arabic, Korean, or Hebrew, will that be weighted by a college as strongly as Spanish? If not, then the institutions will clearly be giving conscious preference to a group of underrepresented minority students—Hispanic students—in a deliberate way that explicitly takes ethnicity (or, in other cases, race) into account.

Similar issues arise with respect to other experiential categories, as well as geographic distribution. There is no need to speculate about (or experiment with) such approaches, because colleges have already had nearly a half century of experience applying them, and there is ample evidence that the hoped-for results, in terms of minority representation, are not what many people now suggest or claim. Moreover, insofar as such categories were to become surreptitious gateways for minority students, they would soon run the risk of breeding cynicism, and almost certainly inviting legal challenges.

All of the indirect approaches just described pose serious problems. Nor can they be accurately described as ''race-neutral.'' They have all been proposed with the clear goal (whether practicable or not) of producing an appreciable representation of minority students in higher education. In some cases, they involve the conscious use of a kind of social engineering decried by critics of race-sensitive admissions.

Surely the best way to achieve racial diversity is to acknowledge candidly that minority status is one among many factors that can be considered in an admissions process designed to judge individuals on a case-by-case basis. We can see no reason why a college or university should be compelled to experiment with—and ''exhaust''—all suggested alternative approaches before it can turn to a carefully tailored race-sensitive policy that focuses on individual cases. The alternative approaches are susceptible to systematic analysis, based on experience and empirical investigation. A preponderance of them have been tested for decades. All can be shown to be seriously deficient. Indeed, if genuinely race-neutral (and educationally appropriate) methods were available, colleges and universities would long ago have gladly embraced them.

8. Reasonable degrees of institutional autonomy should be permitted—accompanied by a clear expectation of accountability.

As the courts have recognized in other contexts (for example, in giving reasonable deference to administrative agencies), a balance has to be struck between judicial protection of rights guaranteed to all of us by the Constitution and the desirability of giving a presumption of validity to the judgments of those with special knowledge, experience, and closeness to the actual decisions being made. The widely acclaimed heterogeneity of the American system of higher education has permitted much experimentation in admissions, as in other areas, and has discouraged the kinds of government-mandated uniformity that we find in many other parts of the world. Serious consideration should be given to the disadvantages of imposing too many ''do's'' and ''don'ts'' on admissions policies.

The case for allowing a considerable degree of institutional autonomy in such sensitive and complex territory is inextricably tied, in our view, to a clear acceptance by colleges and universities of accountability for the policies they elect and the ways such policies are given effect. There is, to be sure, much more accountability today than many people outside the university world recognize. Admissions practices are highly visible and are subject to challenge by faculty members, trustees and regents, avid investigative reporters, disappointed applicants, and the public at large. Colleges and universities operate in more of a ''fishbowl'' environment than the great majority of other private and public entities. Nonetheless, we favor even stronger commitments by colleges and universities to monitor closely how specific admissions policies work out in practice. Studies of outcomes should be a regular part of college and university operations, and if it is found, for example, that minority students (or other students) accepted with certain test scores or other qualifications are consistently doing poorly, then some change in policy—or some change in the personnel responsible for administering the stated policy—may well be in order.

That point was made with special force by a very conservative friend of ours, Charles Exley, former chairman and CEO of NCR Corporation and a onetime trustee of Wesleyan University. In a pointed conversation that one of us (Bowen) will long remember, Exley explained that he held essentially the same view that we hold concerning who should select the criteria and make admissions decisions. ''I would probably not admit the same class that you would admit, even though I don't know how different the classes would be,'' he said. ''You will certainly make mistakes,'' he went on, ''but I would much rather live with your errors than with those that will inevitably result from the imposition of more outside constraints, including legislative and judicial interventions.'' And then, with the nicest smile, he concluded: ''And, if you make too many mistakes, the trustees can always fire you!''

9. Race matters profoundly in America; it differs fundamentally from other ''markers'' of diversity, and it has to be understood on its own terms.

We believe that it is morally wrong and historically indefensible to think of race as ''just another'' dimension of diversity. It is a critically important dimension, but it is also far more difficult than others to address. The fundamental reason is that racial classifications were used in this country for more than 300 years in the most odious ways to deprive people of their basic rights. The fact that overt discrimination has now been outlawed should not lead us to believe that race no longer matters. As the legal scholar Ronald Dworkin has put it, ''the worst of the stereotypes, suspicions, fears, and hatreds that still poison America are color-coded . . .''

The after effects of this long history continue to place racial minorities (and especially African-Americans) in situations in which embedded perceptions and stereotypes limit opportunities and create divides that demean us all. This social reality, described with searing precision by the economist Glenn C. Loury in The Anatomy of Racial Inequality, explains why persistence is required in efforts to overcome, day by day, the vestiges of our country's ''unlovely racial history.'' We believe that it would be perverse in the extreme if, after many generations when race was used in the service of blatant discrimination, colleges and universities were now to be prevented from considering race at all, when, at last, we are learning how to use nuanced forms of race-sensitive admissions to improve education for everyone and to diminish racial disparities.

The former Attorney General Nicholas Katzenbach draws a sharp distinction between the use of race to exclude a group of people from educational opportunity (''racial discrimination'') and the use of race to enhance learning for all students, thereby serving the mission of colleges and universities chartered to serve the public good. No one contends that white students are being excluded by any college or university today simply because they are white.

William G. Bowen is president emeritus of Princeton University and president of the Andrew W. Mellon Foundation. He is the co-author, with Derek Bok, of The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions (Princeton University Press, 1998) and, with Sarah A. Levin, of Reclaiming the Game: College Sports and Educational Values (Princeton University Press, forthcoming in 2003). Neil L. Rudenstine is president emeritus of Harvard University and chairman of the board of ARTstor. His extended essay ''Diversity and Learning'' (The President's Report: 1993–1995, Harvard University) focuses on the value of diversity in higher education from the mid-19th century to the present.

THE IMPORTANCE OF TITLE IX

Mr. LEAHY. Mr. President, today the Commission on Opportunity in Athletics sent Secretary Rod Paige their recommendations to change the landmark gender equity law—Title IX.

Two members of the Commission—Julie Foudy and Donna de Varona—decided not to sign the report and instead submitted a minority report because they found the final report slanted, incomplete, and failing to acknowledge that discrimination against women in education still exists. I am very disappointed the Commission did not write a more balanced report, which all members would have felt comfortable signing.

Since its passage more than 30 years ago as part of the Education Amendments of 1972, Title IX has played a monumental role in the advancement of equality for women throughout America. This landmark legislation has opened the doors to colleges, universities and sports team locker rooms for our sisters, daughters and friends. Women's participation in sports has dramatically increased so that women now make up about 40 percent of all college athletics, compared with 15 percent in 1972. Studies have shown that women who participate in athletics learn important values such as, teamwork, leadership, and discipline—values that stay with them throughout their lives.

On January 29, Senators DASCHLE, SNOWE, KENNEDY, SPECTER, MURRAY